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# ***California Emergency Telephone Users Surcharge***

## ***Regulations***

***Issued Pursuant to  
Part 20, Division 2  
Revenue and Taxation Code***

***June 2001***

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## ***FOREWORD***

This publication contains regulations that apply to the California Emergency Telephone Users Surcharge Law. The regulations have been adopted by the State Board of Equalization and are designed to implement, interpret, or make specific provisions of the law. Board regulations are revised periodically.

If you have any questions regarding the information contained in this publication, please call the Excise Tax Division at 1-800-400-7115.

We welcome your suggestions for improving this or any other of the Board's publications. Please send your suggestions to:

Excise Taxes Division  
State Board of Equalization  
450 N Street, MIC:56  
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*Note: This publication contains the applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, the latter is controlling.*

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(California Administrative Code, Title 18, Chapter 2, Subchapter 5.5)

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State of California  
BOARD OF EQUALIZATION

EMERGENCY TELEPHONE USERS' SURCHARGE REGULATION

ARTICLE 1. IMPOSITION OF SURCHARGE

**Regulation 2401. DEFINITIONS.**

*Reference:* Sections 41007 and 41021, Revenue and Taxation Code.

**(a) SERVICE SUPPLIER.** "Service Supplier" means any person supplying intrastate telephone communication services to any service user in this state, provided however:

(1) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(2) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

**(b) INTRASTATE TELEPHONE COMMUNICATION SERVICES.** "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes telephonic quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication as well as a service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

**(c) BILLING AGENT.** "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

**(d) BILLING AGGREGATOR.** "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such the time and in such form as the Board requests.

**(e) PREPAID TELEPHONE CALLING CARD.** "Prepaid telephone calling card" means any card, or other

identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

*History:* Adopted April 6, 1977, effective July 1, 1977.

Amended April 1, 1997, effective October 1, 1997. Added subsection (c).

Amended January 5, 2000, effective May 27, 2000. Added (d) Billing Aggregator.

Amended July 26, 2000, effective November 1, 2000. Revised definition of Service Supplier and added (e) which defined Prepaid Telephone Calling Card.

### **Regulation 2403. PREPAID TELEPHONE CALLING CARDS.**

*Reference:* Sections 41011 and 41021, Revenue and Taxation Code.

**(a)** The surcharge applies to the dollar amounts deducted or the value of the minutes deducted from the prepaid telephone calling card by the providing service supplier to the extent that those dollar amounts or minutes were deducted to pay for intrastate telephone communication services provided to the user of the prepaid telephone calling card. Dollar amounts or minutes deducted for interstate telephone communication services are exempt from the surcharge. Dollar amounts or minutes of telephone service which are forfeited because they have not been used prior to the expiration of the prepaid telephone calling card are not subject to the surcharge.

**(b)** Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the providing service supplier may apply the surcharge to an estimate of the charges for intrastate services subject to the surcharge. The estimate of charges may be based on such call information as the providing service supplier reasonably believed demonstrates the approximate amount of intrastate telephone communication service charges subject to the surcharge.

**(c)** If a prepaid telephone calling card contains a statement that the price of the card includes applicable taxes and fees, the service supplier responsible for collecting and paying the surcharge on intrastate telephone communications services provided pursuant to the card may reduce the taxable measure of such services by taxes and fees which are not subject to the 911 surcharge. Taxes and fees which are not subject to the 911 surcharge include the federal excise tax and the 911 surcharge. Taxes and fees imposed on the service supplier by statute, such as those imposed by the California Public Utilities Commission, may not be deducted from the taxable measure.

*History:* Adopted July 26, 2000, effective November 1, 2000.

### **Regulation 2405. PARTIAL PAYMENTS.**

*Reference:* Sections 41024 and 41128, Revenue and Taxation Code.

Partial payments by a service user to a service supplier for intrastate charges for service shall be applied proportionately to the charges for service and to surcharge, unless the service user specifically directs otherwise in writing.

*History:* Adopted April 6, 1977, effective July 1, 1977.

### **Regulation 2406. LIABILITY FOR SURCHARGE REMITTED BY BILLING AGGREGATOR OR BILLED THROUGH BILLING AGENTS**

*Reference:* Sections 41021 and 41023, Revenue and Taxation Code.

**(a)** The surcharge is required to be remitted by the service supplier which provided the intrastate telephone communication services.

**(b)** Where a return is filed and surcharge remitted by a billing aggregator on behalf of one or more service

suppliers, the service supplier will be deemed to have remitted the surcharge if all of the following conditions have been met:

(1) The service supplier has registered with the Board in accordance with Regulation 2421.

(2) The service supplier has notified the Board in writing that the billing aggregator is authorized to act on its behalf to prepare and file returns and remit the surcharge to the Board, and such authorization is still in effect.

(3) The service supplier has provided to the Board and to the billing aggregator its written consent for the billing aggregator to disclose to the Board any and all records concerning the activities conducted on behalf of the service supplier related to the surcharge.

(4) The billing aggregator does either (A) or (B).

(A) files a separate return for each service supplier on whose behalf the return is filed which includes the name, address, account number and amount of surcharge remitted; or

(B) files a single return for more than one service supplier; provided that the billing aggregator, at such time and in such form as the board requests, shall identify the service suppliers on whose behalf it filed the return and provide documentation supporting the return.

(c) A service supplier acting as a billing agent for another service supplier, reseller or billing aggregator is not liable for remitting the surcharge on services provided by or billed on behalf of the other service supplier, reseller or billing aggregator even though those charges may be included, as a separate part of a billing, with charges for services it did provide to the service user. A billing agent providing only billing services is not a service supplier and is not required to remit the surcharge collected on behalf of a service supplier that provided the service.

*History:* Adopted April 1, 1997, effective October 1, 1997.

*Amended January 5, 2000, effective May 27, 2000.* Added (b) which clarified the remittance of the surcharge by a billing aggregator on behalf of one or more service suppliers.

## ARTICLE 2. EXCLUSIONS AND EXEMPTIONS

### **Regulation 2413. EXEMPTIONS FROM SURCHARGE.**

*Reference:* Sections 41019 and 41027, Revenue and Taxation Code.

The surcharge does not apply to:

(a) Charges for service or equipment furnished by a service supplier subject to public utilities regulation during any period when the same or similar service or equipment is also available for sale or lease from other than a service supplier subject to public utility regulation.

(b) Charges for service when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California. These include charges for service to:

(1) The United States, its unincorporated agencies and instrumentalities, or any state of the United States.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28.

(5) Banks, including national banking associations, located within the limits of this state. The exemption

for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The service supplier shall collect the surcharge from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

(6) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation.

(7) Foreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.

(8) Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.

(c) Toll charges used in the collection and dissemination of news for public press.

(d) Charges for wide-area telephone service used by common carriers in the conduct of their business.

(e) Charges for intrastate telephone communication services which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

*History:* Adopted April 6, 1977, effective July 1, 1977.

Amended January 9, 1980, effective February 29, 1980. In (b) (5) added second and third sentences.

### ARTICLE 3. REGISTRATION, RETURNS AND REPORTS

#### **Regulation 2421. REGISTRATION.**

*Reference:* Section 41040, Revenue and Taxation Code.

Every service supplier supplying intrastate telephone communication service to any service user in this state shall register with the Board upon a form prescribed by the Board and shall set forth the name under which it transacts or intends to transact business, the principal office address and the mailing address of the service supplier, and such other information as the Board may require. The registration form shall be signed by the owner, a general partner, or a responsible officer of the corporation, as the case may be.

*History:* Adopted April 6, 1977, effective July 1, 1977.

**Regulation 2422 note:** Regulation 2422 is being revised. Effective January 1, 1997, the reporting period for filing and paying the tax was changed from quarterly to monthly.

#### **Regulation 2422. RETURNS AND PAYMENT.**

*Reference:* Sections 41051, 41052, and 41053, Revenue and Taxation Code.

On or before the last day of the second month of each calendar quarter every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the Board for the preceding calendar quarter. The return shall be signed by a responsible officer or agent of the service supplier and shall be accompanied by a payment for the surcharge due. All remittances shall be payable to the State Board of Equalization.

At the time of filing each surcharge return the service supplier shall provide the Board with a list containing the names and addresses of any service users who have refused to pay the surcharge, the date the surcharge was billed to each customer, the amount of each unpaid surcharge, and the reasons, if any, given by the users for refusing to make such payment. On and after January 1, 1982, such information shall be provided for a service user only if the cumulative uncollected amount for that user totals \$3.00 or more.

*History:* Adopted April 6, 1977, effective July 1, 1977.

Amended July 28, 1982, effective December 5, 1982. Added \$3.00 limit on reported uncollectibles, in second paragraph.

Amended May 6, 1986, effective July 17, 1986. In the first paragraph, amended due date for submitting the return and making payments.

## **Regulation 2425. REPORTS.**

*Reference:* Section 41128, Revenue and Taxation Code.

Every service supplier registered with the Board shall annually file a report with the Board in such form as the Board may prescribe setting forth its estimate of the amount of intrastate telephone communication revenues on which it will collect and remit to the Board the emergency telephone users surcharge from November 1 of the current year through October 31 of the following year. This report shall be filed no later than June 30 of each year commencing June 30, 1978.

In addition to any other reports of returns required, the Board may require additional, supplemental, or other reports from service suppliers and service users.

*History:* Adopted April 6, 1977, effective July 1, 1977.

## **ARTICLE 4. RECORDS**

### **Regulation 2431. RECORDS.**

*Reference:* Sections 41056, 41073, 41129, and 41130, Revenue and Taxation Code.

**(a) GENERAL.** Every service supplier liable for payment of the emergency telephone users surcharge which it collects from service users shall keep complete and accurate records showing:

- (1) Totals for intrastate telephone communication in this state billed to service users.
- (2) All exemptions allowed by law.

(3) Amounts of Emergency Telephone Users Surcharge Collected. These records must include the normal books of account ordinarily kept by a service supplier furnishing intrastate telephone communication services, together with documents of original entry supporting the entries in the books of account, as well as copies of the tax returns and reports and all schedules or working papers used in connection with the preparation of the tax returns and reports.

**(b) MICROFILM RECORDS.** Microfilm reproductions of general books of account are not acceptable in lieu of original records. However, microfilm reproductions of supporting records of billing details may be maintained providing the following conditions are met:

- (1) Appropriate facilities are provided for preservation of the films for periods required.
- (2) Microfilm rolls are indexed, cross-referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listings of documents included, and are systematically filed.
- (3) The service supplier agrees to provide transcription of any information contained on microfilm which may be required for purposes of verification of surcharge liability.
- (4) Proper facilities are provided for the ready inspection and location of the particular records, including modern projectors for viewing and copying the records.

A posting reference must be on each service order. Credit memoranda must carry a reference to the original billing date of the surcharge. Documents necessary to support claimed exemptions from surcharge liability must be maintained in an order by which they readily can be related to the reason for which exemption is sought.

**(c) RECORDS PREPARED BY AUTOMATED DATA PROCESSING SYSTEMS.** An ADP tax accounting system must have built into its program a method of producing visible and legible records which will provide the necessary information for verification of the taxpayer's surcharge liability.

(1) Recorded or Reconstructible Data. ADP records must provide an opportunity to trace any service user's telephone billings back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, then the system must have the ability to reconstruct these transactions.



(2) General and Subsidiary Books of Account. A general ledger, with source references, will be written out to coincide with financial reports for surcharge reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.

(3) Supporting Documents and Audit Trail. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Board upon request. The system should be so designed that supporting documents are readily available.

(4) Program Documentation. A description of the ADP portion of the accounting system should be available.

The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate:

(A) The application being performed.

(B) The procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory descriptions of the input or output procedures.)

(C) The controls used to insure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

**(d) RECORDS RETENTION.** All records pertaining to transactions involving emergency telephone users surcharge liability must be preserved for a period of not less than four years from the due date of the returns supported by such records unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

**(e) EXAMINATION OF RECORDS.** All records must be made available for examination upon proper notification to the service supplier by the Board or its authorized representative at all reasonable times.

**(f) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and adequate records will be considered evidence of negligence or intent to evade the surcharge and may result in penalties or other appropriate administrative action.

*History: Adopted April 6, 1977, effective July 1, 1977.*

## **Regulation 2432. RELIEF FROM LIABILITY.**

*Reference: Section 41098, Revenue and Taxation Code.*

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of the Emergency Telephone Users Surcharge, including any penalties and interest added to the surcharge, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person

receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A PRIOR COMMUNICATION.** Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS.** A trade or industry association seeking advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

*History: Adopted July 26, 2000, effective November 1, 2000.*

## BOARD FIELD OFFICES

CITY	AREA CODE	NUMBER	CITY	AREA CODE	NUMBER	CITY	AREA CODE	NUMBER
Bakersfield	661	395-2880	Riverside	909	680-6400	Torrance	310	516-4300
Culver City	310	342-1000	Sacramento	916	227-6700	Van Nuys	818	904-2300
El Centro	760	352-3431	Salinas	831	443-3003	Ventura	805	677-2700
Eureka	707	445-6500	San Diego	619	525-4526	West Covina	626	480-7200
Fresno	559	248-4219	San Francisco	415	703-5400	<b>Offices for Out-of-State Accounts</b>		
Kearny Mesa	858	636-3191	San Jose	408	277-1231			
Laguna Hills	949	461-5711	San Marcos	760	510-5850			
Norwalk	562	466-1694	Santa Ana	714	558-4059			
Oakland	510	622-4100	Santa Rosa	707	576-2100			
Rancho Mirage	760	346-8096	Stockton	209	948-7720	Chicago, IL	312	201-5300
Redding	530	224-4729	Suisun City	707	428-2041	Houston, TX	281	531-3450
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						Sacramento, CA	916	227-6600

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**Call our toll-free number:** 1-800-400-7115. Leave a recorded request 24 hours a day for a specific form, publication, or regulation, or, during working hours, talk to a representative.

For TDD assistance (telephone device for the deaf), please call:

From TDD phones: 1-800-735-2929

From voice phones: 1-800-735-2922

**Use our fax-back service.** Available 24 hours a day through the toll-free number. A recorded message will describe which types of documents are available and explain how you can have them sent to you by fax.

**Use the Internet.** Use your computer to download a publications order form or certain publications.

Enter: <http://www.boe.ca.gov>

## WRITTEN TAX ADVICE

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if the Board determines that you reasonably relied on written advice from the Board regarding the transaction. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstance of the transaction.

You may also request written advice regarding a particular activity or transaction. Your request should be in writing and fully describe the facts and circumstances of the activity in question. Please mail your request to the following address: State Board of Equalization, Excise Taxes Division, P.O. Box 942879, Sacramento, CA 94279-0056

## TAXPAYERS' RIGHTS ADVOCATE OFFICE

If you have been unable to resolve a disagreement with the Board, or if you would like to know more about your rights under the law, contact the Taxpayers' Rights Advocate for help:

Taxpayers' Rights Advocate, MIC:70  
State Board of Equalization  
PO Box 942879  
Sacramento, CA 94279-0070

1-888-324-2798  
916-324-2798  
916-323-3319

toll-free phone  
phone  
fax

## TAX EVASION HOTLINE

Tax evasion hurts businesses that are paying their fair share. If you wish to report a case of suspected tax evasion, call our toll-free hotline at 888-334-3300, Monday through Friday, 8:00 a.m. – 5:00 p.m. (Pacific time), except State holidays.



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